FASTWAY

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To,

Shri Anil Kumar Bharadwaj,
Advisor (B&CS)-II,
Telecom Regulatory Authority of India (TRAI),
Mahanagar Door Sanchar Bhawan,
J.L. Nehru Marg (Old Minto Road),
New Delhi-110002

Subject: Fastway response to Consultation Paper No. 05/2022 regarding Issues Related to New Regulatory Framework for Broadcasting and Cable Services

Dear Sir,

We write with reference to the Consultation Paper issued by TRAI and thank the Authority for taking up the issues pertaining to the New Regulatory Framework for Broadcasting and Cable Services.

A. <u>Background</u>

1. Before responding to the queries posed in the Consultation Paper, by way of brief background, we would like to highlight the challenges being faced by the Multi-System Operators under the new regulatory framework, especially with implementation of NTO 2.0.

2. The foremost challenge to be faced by the entire broadcasting and cable services industry is that **<u>there is a trend of constant decline in subscriber base for MSOs and DTH operators.</u>**Even as per TRAI's own data, during last more than one-year (approx. 8 quarters) total active number of DTH subscribers has decreased from 70.99 million to 68.89 million. Similarly, number of total active subscribers of major MSOs/HITS operators having more than 1 million subscribers, has decreased from 47.58 million to 45.55 million.

3. This trend is disturbing for the Authority and all stakeholders in the broadcasting and cable industry, except the large broadcasters, who have a presence in the alternative space of OTT services. It is important for TRAI to appreciate that some broadcasters are not impacted like other stakeholders by the reduction of the market size as they have presence in the OTT/Online market as well. However, MSOs, DTH operators and LCOs who employ more than 10 lakh people are directly impacted by the trend of reduction in subscribers.

4. MSO industry is witnessing churn of 2.5% per month, and any increase in price will lead to annihilation of the industry.

B. Same Service, Same Rules - Linear TV vs OTT Platform services

5. Policy Guidelines for Downlinking of Television Channels (hereinafter "**Downlinking Guidelines**") were published by the Ministry of Information and Broadcasting, Government of India on 05 December 2011 and establishes a procedure for applying for permission for downlinking a channel. Downlinking Guidelines outlines certain basic conditions/obligations which the permitted entities are required to follow.

6. As per Clause 5.6 of the Downlinking Guidelines, "*The applicant company shall provide Satellite TV Channel signal reception decoders only to MSOs/Cable Operators registered under the Cable Television Networks (Regulation) Act 1995 or to a DTH operator registered under the DTH guidelines issued by Government of India or to an Internet Protocol Television (IPTV) Service Provider duly permitted under their existing Telecom License or authorized by Department of Telecommunications or to a HITS operator duly permitted under the policy guidelines for HITS operators issued by Ministry of Information and Broadcasting, Government of India to provide such service.*"

7. It is evident from the aforesaid clauses that the permission for downlinking restricts the Broadcasters from providing its channel(s) to an entity other than the ones specified. Therefore, broadcasters through their own or third party OTT platforms should not be allowed to provide the same content directly to consumers.

8. Despite the downlinking guidelines, several broadcasters either directly or indirectly are providing liner or non-liner signal of the same content that is available on the television channel on the internet, thus creating a substitutable and competing service on OTT platforms.

9. The pricing on average for OTT platforms is lower and the paid content is also provided advertisement free to the subscriber. There is no level playing field available to MSOs as the RIO offered to MSOs is not comparable to the pricing available for online content on OTT platforms.

10. Any attempt to redress the issue of falling subscriber numbers across the industry cannot be made without creating level playing field and appreciating how the Broadcasters

participating both in the Cable TV and OTT platforms is distorting the decision making and approach of Broadcasters towards the Cable TV medium.

C. **Exponentialincreaseinpricesofdriverchannels:**

11. Aplainreadingof the RIOspublished bythe broadcasters revealthatalmostall ofthem have increased prices of their driver channel exponentially by 30% to 60%, thereby resulting in the exclusion of such channels from the bouquets as NTO 2.0 has capped the price of channel to be included in bouquet at Rs. 12/-

12. A comparison of SD- variants of maximumretailprice(MRP) of certain driver channels is as under:

S.No	Name of the channel	Genre	SD/HD	Pre NTO 1 (A)	NTO 1 (B)	NTO 2 (C)
1	Star Plus	GEC	SD	7.87	19.00	23.00
2	Zee TV	GEC	SD	5.83	19.00	22.00
3	Colors	GEC	SD	8.99	19.00	21 00
4	Sony Entertainment Channel(SET)	GEC	SD	8.99	19.00	24.00
5	ETV	GEC	SD	4.49	17.00	22.00
6	SUN TV	GEC	SD	5.25	19.00	19.00
7	Asianet	GEC	SD	5.23	19.00	22.00
8	Maa TV	GEC	SD	5.25	19.00	22.00
9	Vijay TV (Star Vijay)	GEC	SD	1.80	17.00	19.00

13. Afurtheranalysisofthe dataappendedatAnnexure-BwouldalsorevealthattheMRPof driver channels of premiere broadcasters have exponentially increased between 200-400%inaperiodofaroundtwoyearsof time,i.e.from2019to2021.WhiletheMRPsof suchchannels werealready increased between150-200%duringthe implementationof NewTelecomRegulatoryFramework/thePrincipalRegulationsin 2019;the priceshave yetagainbeenincreasedbythebroadcastersbyfurther20-30%in 2021whichhasledto the consumers to shellout over approximately 200%-400%of additional costs on the MRPsofthepremierechannelssince2019.

14. Thisanalysisevidently showsthatwhilethebroadcastershavecontinued to exploit their liberty by increasing the prices of their respective channels at their own whims and fancies, however the Distribution Platform Operators (DPOs) have been stringently subjected to the micromanagement and over-regulation on all revenues and there has been no growth/increase in the revenues earned bythe DPOs.

15. Moreover,suchpervasive pricingmodelhasbeenadopted bythe broadcasters will lead to a further erosionofthe subscriberbases,whichwasalsobeenevidentduringthe implementationoftheNewRegulatoryFrameworkof 2019.Thisevidentlyestablishes

that such broadcasters arethe only stakeholder that are benefitting from the entire revenuechain,andtheyareguidedwiththeobjective ofincreasingtheirrevenues,even atthe costofthe consumers.

16. The recent RIOs and channel prices issued by broadcasters have defeated the mainpurposeof NTO2.0 regulatory framework i.e., to reducetelevisionbillsof the subscribers,however it isprovingexactlythe opposite.

17. Thisincreaseindriver _______ channelpriceswillincreasethemonthlycostof subscribersbyRs.60/-toRs.100/-asthe premierechannelshavebeenkept outside thepurview ofthebroadcasters'formedbouquetsandintheevent,thesubscribersstillwanttohaveacces stoall suchpremierechannels, they willhavetoshelloutmore money forbeingabletoenjoythe same services.Itisstatedbeforethe Authority that for instance, presently, asubscriber who hassubscribedtothe bouquets of

    i. Star India PrivateLimited (Hindi Valuecomprisingof twoof its premiere channelsStar PlusandStarSports1) - Rs. 49
    ii. TV18BroadcastLimited(HindiBudgetcomprisingof itspremierechannel 'Colors') - Rs. 22
    iii. ZeeEntertainmentEnterprises Limited (Zee Family PackSDcomprising of its premiere channel 'ZeeTV') - Rs. 39
    iv. SonyPicturesIndiaPrivateLimited(HappyIndia31withitspremierechannel'SET') - Rs. 31

    Pays an amount of Rs. 49+22+39+31, i.e., an amount of Rs. 141/- (towards the price of therespective bouquets in the aforesaid order) + Rs. 130/- (towards the NCF). i.e., acumulative amount of Rs.271/- towards cable television services.

18. Whereas after implementation of NTO 2.0, any subscriber whowishestomaintainthe statusquo andenjoy similar cabletelevision servicesaswasbeingavailed by himtillnow,will availthebouquetsof

    i. TV18BroadcastLimitedinthe nameof'ColorsFamilyHindiPack' (pricedat Rs.12.80/-)alongwithitspremierechannelColors(pricedatRs.21/-);
    ii. StarIndia Private Limited in the name of'SVPLite Hindi' (priced at Rs. 25/-) alongwith itspremiere channelStar Plus(pricedat Rs.25/-) andStar Sports I (priced at Rs.23/-)
    iii. SonyPicturesIndiaPrivateLimitedinthenameof'HappyIndiaHindiBlockbuster'(pricedat Rs. 24/-) together with its premiere channel 'SET' (priced at Rs. 24/-) and
    iv. ZeeEntertainmentEnterprises Limitedinthe nameof 'ZeeFamilyPack' (pricedat Rs.27/-)togetherwithitspremierechannelZeeTV(priced at Rs.22/-

Paysanamount of Rs.203.80/- instead of Rs.141/-towardsthe MRP ofchannels and bouquets of pay channelsandacumulativeamountofRs.333.80/- (MRPofchannelsandbouquetsofpay channels+NCFofRs.130/-)

19 It is also submitted that the above may be seen in context of the fact that all the major broadcasters also have parallel OTT services which are being offered at cheaper rates. In such circumstances, it becomes essential to protect the industry and all stakeholders that **TRAI should introduce a cap on MRP of INR 12 on price of any channel.**

20. Despite the amended Regulations in 2020 limiting the 15% discount only for the a la carte channelsbut not for the bouquets, the RIO published by some broadcasters have linked the 15% discount based on the minimum penetration of the driver a la carte channels along with the bouquet of non-prominent channels, in order to push them on to subscriber and increase the subscriber costs.

D. <u>Response to queries raised in consultation paper</u>

Q1. Should TRAI continue to prescribe a ceiling price of a channel for inclusion in a bouquet?

a. If yes, please provide the MRP of a television channel as a ceiling for inclusion in a bouquet. Please provide details of calculations and methodology followed to derive such ceiling price.

b. If no, what strategy should be adopted to ensure the transparency of prices for a consumer and safeguard the interest of consumer from perverse pricing?
Please provide detailed reasoning/ justifications for your comment(s).

Response:

i. It has been observed clearly that the Broadcasters have exploited the pricing freedom provided to them to deliberately price the driver channels above the benchmark for inclusion in bouquetleading to significant increase in subscriber prices.

ii. Therefore, the correct strategy to adopt to ensure the transparency of prices for a consumer and safeguard the interest of consumer from perverse pricing is to cap the overall price of any channel MRP at INR 12/-only.

iii. The channel pricing before implementation of NTO (refer page 73 of TRAI consultation paper dated 16th Aug 2019), wherein maximum price of SD channels were marked at Rs. 9 per channel and below that, post that if we add inflation of last 3-4 years, at a CAGR of 7%, the channel price shall not exceed Rs. 12 in any case.

iv. Channels should be priced in a manner that is affordable to the consumer and INR 12/- per channel cap will ensure affordability and access to content to all consumers. More so, since the major broadcasters have alternate platforms of their own OTT platforms they have no incentive to price channels as per the requirement of the consumer or to ensure affordability, competitiveness and protection of the consumer base for Cable TV industry.

v. In addition to above with respect to regulating advertisement time on pay channels, we would also request Authority to introduce Ad-Cap wherein there should be cap of maximum permissible time for advertisement during an hour i.e. 60 minutes ("**Ad-Cap**"), based on the aforesaid price range/band(s). Accordingly, we suggest an Ad-Cap as is stated in the table below:

Sr. No.	Band(s) for the purpose of Ad-Cap	Lower Range of MRP (In Rs)	Upper Range of MRP (In Rs)	Ad-Cap per 60 Minutes
1	Band 1	0.01	1.00	12
2	Band 2	1.00	4.00	9
3	Band 3	4.01	8.00	6
4	Band 4	9.01	12.00	3

vi. As per the data quoted in the consultation paper itself the revenue of the broadcaster is earned from both subscription and advertising revenues. The broadcasters have no limitation on the advertisement revenues and are showing advertisements for upto 20% of the viewership time. The Ad-Cap is required as the customer is already paying for the channel and is still subjected to advertisement when accessing the content on DPOs platforms. However, content is provided ad-free on OTT platform.

Q2. What steps should be taken to ensure that popular television channels remain accessible to the large segment of viewers. Should there be a ceiling on the MRP of pay channels? Please provide your answer with full justifications/reasons.

Response:

i. Broadcasters have exploited the pricing freedom provided to them to deliberately price the driver channels at unaffordable and perversely high price points making it impossible for consumers to access content of their choice at an affordable price point.

ii. The channels which are popular should be made affordable to the consumer. As suggested above, MRP of channel shall be capped at Rs. 12.

iii. Unless a pricing cap is introduced on the price of the popular channels, consumers who are already accustomed to and searching for certain driver channels will have to pay more for viewing the TV content that they are used to viewing

iv. As suggested above, the 15% discount should be merged with distribution fee so that pure subscriber choice alone determines the off take of the channel rather than push/inducement to increase the channel off take to earn 15% discount. Such an amendment will lead to true price discovery of the channel /bouquet based on subscriber choice.

Q3. Should there be ceiling on the discount on sum of a-la-carte prices of channels forming part of bouquets while fixing MRP of bouquets by broadcasters? If so, what should be appropriate methodology to work out the permissible ceiling on discount? What should be value of such ceiling? Please provide your comments with justifications.

Response

i. Yes, there should be ceiling on the discount on sum of a-la-carte prices of channels forming part of bouquets while fixing MRP of bouquets by broadcasters so that unwanted channels are not pushed to subscribers increasing the cost to subscribers. There should be linkage of Bouquet price and sum of a-la-carte price so that the pricing is not skewed in favour of bouquets.

ii. **To ensure that the prices of the a-la-carte Channels have a direct-correlation with the price of the Bouquets being offered by the Broadcasters, thereby leading to appropriate pricing of the ala-carte Channels by the Broadcasters, we submit that the present framework of twin condition, shall remain maintainable.**

iii. We would also like to mention that to ensure that popular/premium channels are not unnecessarily clubbed with unpopular channels, a price range/band(s) should also be introduced and adhered to for inclusion of channels in a bouquet. Accordingly, we have suggested a price range/band(s) for inclusion of a channel in a bouquet and the same is/are reproduced herein below:

Sr. No.	Band(s) for inclusion of a channel in a Bouquet	Lower Range (In Rs)	Upper Range (In Rs)
1	Band 1	0.01	1.00
2	Band 2	1.01	4.00
3	Band 3	4.01	8.00
4	Band 4	9.01	12.00

iv. **<u>Further, any channel whose MRP is above Rs. 12/- should not be permitted to be part of a bouquet and mandatorily made ad free</u>**

v. Additionally, bouquets can be considered to be restricted based on channels within the same genre/same language, so that bouquet size will be small and affordable to consumers

Q4. Please provide your comments on following points with justifications and details:

a. **Should channel prices in bouquet be homogeneous? If yes, what should be an appropriate criteria for ensuring homogeneity in pricing the channels to be part of same bouquet?**

b. **If no, what measures should be taken to ensure an effective a-la-carte choice which can be made available to consumers without being susceptible to perverse pricing of bouquets?**

c. **Should the maximum retail price of an a-la-carte pay channel forming bouquet be capped with reference to average prices of all pay channels forming the same bouquet? If so, what should be the relationship between capped maximum price of an a-la-carte channel forming the bouquet and average price of all the pay channels in that bouquet? Or else, suggest any other methodology by which relationship between the two can be established and consumer choice is not distorted.**

Response:

i. In addition to our aforementioned response to question no. 3, our view is that the basic issue that needs to be understood is that consumer demand is based on "content". Homogeneity in a bouquet should not only seen as homogeneity in prices, but more importantly homogeneity in content – considering the India's social, cultural and demographic diversity. The channel carrying the popular content like a TV show or a particular sports programme will drive the consumer selection.

ii. The broadcasters are controlling the MRP of the channels and the response of the broadcasters to the conditions imposed by TRAI on the formulation of bouquet has been to overprice a channel out of the bouquet, knowing well that the consumer that is already accustomed to particular content will subscribe that channel.

iii. Therefore to truly protect consumer choice it is important to ensure a capping of price of any TV channel so that the popular channels remain within the affordable range for consumers who wish to access them. The change in the market place is that the broadcasters are no longer directly concerned with the loss in subscribership in the cable TV platforms so long as they can capture the customer in the alternative OTT platform services that they are providing directly.

iv. The question of homogeneity of the bouquet will become less important if the TRAI accepts the recommendation to cap MRP of channels at INR 12/- per channel, which is the need of the hour for protecting the broadcasting and cable TV industry in India.

v. Twin conditions methodology prescribed in current regulation is sufficient to define the relationship between pricing of a la carte and bouquet price of channel. Further, homogeneity in content will help in curtailing skewed bouquet pricing vs a la carte pricing.

vi. There should alsobe cap on inclusion of any single channel in the bouquets offered by the Broadcasters. Any single channel shall not be part of more than 10 bouquets offered by the broadcasters

Q5. Should any other condition be prescribed for ensuring that a bouquet contains channels with homogeneous prices? Please provide your comments with justifications.

Response:

See answer to Q.4

Q6. Should there be any discount, in addition to distribution fee, on MRP of a-la-carte channels and bouquets of channels to be provided by broadcasters to DPOs? If yes, what should be the amount and terms & conditions for providing such discount? Please provide your comments with justifications.

Response:

(i) The trend of constant reduction in revenue of MSOs has been noticed by the TRAI in the consultation paper. Since the MSOs form the backbone of cable TV industry, it is important to ensure that the profitability of the MSOs is also protected.

(ii) It is seen that the broadcasters are earning significant revenues from advertising stream also. However, MSOs have limited revenue streams.

(iii) The 15% incentive being provided by the Broadcasters to MSOs is linked to penetration of the channel or bouquet in the DPO's customer base, is itself contrary to the mandate provided by the regulation, which envisages consumer choice as first and foremost paramount interest of the New Tariff Order (NTO). This is forcing MSOs to push the channel of the Broadcaster.

(iv) We therefore suggest that the distribution fee on both a-la-carte as well as bouquet offerings by the broadcasters should be made flat at 35% of MRP, to curb anti-regulatory activities by the broadcasters. This will ensure that the DPOs are not arm twisted to meet unreasonable penetration targets set by the Broadcaster.

(v) It should also be made mandatory that all the broadcasters who sign interconnect agreement with DPOs should also mandatorily sign the carriage RIO of DPO.

(vi) We have already stated that on parity, a maximum discount 33% should also be made available to both the broadcasters as well as DPOs, on their bouquet offerings.

Q7. Stakeholders may provide their comments with full details and justification on any other matter related to the issues raised in present consultation.

Response:

While there are number of matters of concern pertaining to NTO 2.0 and the existing regulatory framework, however given the issues raised in the Consultation Paper, we would like to highlight presently the following additional points:

(i) Genre wise Capping on MRP of Pay channels including a maximum cap of Rs. 12/- for any pay channel (Irrespective of Genre)

(ii) Incentive of 15% may be combined with distribution fee and make it 35% of the MRP to be given to DPOs for both a la carte channels and bouquets.

(iii) DPOs should have freedom to choose channels from Broadcasters bouquet which was prevalent before NTO -1

(iv) Linear channels shall be offered to OTT subscribers at MRP declared in RIO of addressable platform.

(v) The 60% discount on Multi TV from second TV onwards, which has been mandated by TRAI on DPOs, shall also be extended to Broadcasters. It is very much logical that for each subscriber and its choices of channel, the price is being paid by DPOs to Broadcasters, as it's a part of business value chain, and therefore, if any discount is mandated to be given by DPOs on Multi TV to subscribers, than that same shall be extended by the Broadcasters to DPOs. We have also submitted our detailed logic in our earlier letters dated 2nd Nov 2021 and 18th Jan 2022.

For Fastway Transmission Pvt. Ltd.

Authorised Signatory